

立法會
Legislative Council

LC Paper No. LS54/12-13

**Paper for the House Committee Meeting
on 24 May 2013**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 16 May 2013**

Date of tabling in LegCo : 22 May 2013

Amendment to be made by : 19 June 2013 (or 10 July 2013 if extended by resolution)

Tate's Cairn Tunnel Ordinance (Cap. 393)

Tate's Cairn Tunnel Ordinance (Amendment of Schedule) Notice 2013 (L.N. 70)

L.N. 70 is made by the Commissioner for Transport (the Commissioner) under section 36(7) of the Tate's Cairn Tunnel Ordinance (Cap. 393) (the Ordinance) to replace the Schedule to the Ordinance with a new one in order to reflect the increase of the tolls payable under the Ordinance.

2. Under section 36 of the Ordinance, the tolls which may be collected for the use by motor vehicles of the Tate's Cairn Tunnel shall be those specified in the Schedule to the Ordinance. The tolls specified in the Schedule may be varied by agreement between the Chief Executive in Council (the CE in Council) and Tate's Cairn Tunnel Company Limited (TCTC), or in default of agreement, by submission of the question of the variation of tolls to arbitration by either of them. After such agreement or arbitral award is made, the Commissioner shall, as soon as is practicable, by notice in the Gazette amend the Schedule.

3. According to paragraphs 6 and 19 of the LegCo Brief (File Ref: THB(T)CR 1/4651/94) issued by the Transport and Housing Bureau in May 2013, the CE in Council and TCTC have reached an agreement to increase the tolls¹. With effect from 1 August 2013, there shall be an increase of \$1.00 for tolls for motorcycles and motor tricycles, and an increase of \$2.00 for tolls for all other types of vehicles and additional axle.

¹ There were six previous toll increases which came into effect in May 1995, November 1996, January 2000, August 2005, November 2008 and December 2010 respectively.

4. A comparison of the current and new tolls is set out below -

Category	Vehicle	Current Tolls(\$)	Toll (\$) (as from 1 August 2013)	Percentage Increase
1.	Motorcycles, motor tricycles	12	13	8%
2.	Private cars, electrically powered passenger vehicles, taxis	15	17	13%
3.	Public light buses	21	23	10%
4.	Private light buses	22	24	9%
5.	Light goods vehicles and special purpose vehicles of a permitted gross vehicle weight not exceeding 5.5 tonnes	22	24	9%
6.	Medium goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 5.5 tonnes but not exceeding 24 tonnes	26	28	8%
7.	Heavy goods vehicles and special purpose vehicles of a permitted gross vehicle weight exceeding 24 tonnes but not exceeding 38 tonnes	26	28	8%
8.	Public and private single-decker buses	29	31	7%
9.	Public and private double-decker buses	32	34	6%
10.	Each additional axle in excess of 2	19	21	11%

5. According to section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the LegCo's power to amend subsidiary legislation has to be consistent with the power to make such subsidiary legislation. As section 36 of the Ordinance provides that the tolls shall be varied in compliance with the agreement or arbitral award as made and that the power of the Commissioner to make notice is merely to amend the Schedule subsequent to such agreement or arbitral award, the Commissioner should not have the power to determine toll levels and the timing for implementation of the new tolls. Consequently, there is little room for the LegCo to repeal or to amend L.N. 70, other than making minor technical amendments. Subcommittees which were formed to study notices made by the Commissioner under section 36(7) of the Ordinance in 2005, 2008 and 2010 also noted such restrictions.

6. Members may refer to the LegCo Brief for background information.

7. According to paragraph 22 of the LegCo Brief, the Transport Advisory Committee was consulted on TCTC's application for the increase of tolls in February 2013. It is of the view that such application is not unreasonable and is justified.

8. As advised by the Clerk to the Panel on Transport, the Panel was consulted on the Administration's proposal on 14 December 2012. Members were generally dissatisfied with the toll increase application by TCTC. They considered that the weighted average rate of toll increase of 11.1% was excessive and would induce fare increases by other public transport operators. In addition, it would have traffic implications on alternative routes. Some members considered that TCTC should take measures to generate more non-toll revenue to subsidize its operation with a view to alleviating its pressure for toll increase.

9. L.N. 70 will come into operation on 1 August 2013.

10. No difficulties have been identified in relation to the legal and drafting aspects of L.N. 70.

Prepared by

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